



**A Publication of the
DEPARTMENT OF REGULATION AND LICENSING FOR
CEMETERY AUTHORITIES, CEMETERY SALESPERSONS AND PRENEED SELLERS
Volume 6, No. 1 June, 1999**

Court of Appeals Decision Concerning Joint Ownership

Cemetery Services International, Inc., appealed the decision of the Court of Appeals, District IV, which was rendered on September 10, 1998. However, the Supreme Court denied the appeal. Therefore, the decision of the Court of Appeals stands and the Department and the Funeral Directors Examining Board will take action to enforce the law. Meanwhile, some of the parties involved in the action had been looking beyond the court appeal and began exploring the possibility of amending the Joint Ownership Law that was passed several years ago. To keep abreast of what is happening, watch for legislative proposals and, perhaps, newspaper accounts.

CEMETERY ADVISORY COMMITTEE

Committee Members:

Kelly Coleman, Green Bay
Marie Drescher, Tomah
Dicie Mae James, Milwaukee
Dewey Mathewson, New London
Reverend Leroy Mixon, Milwaukee
John Nelson, Green Bay
E. Glen Porter, III, New Berlin
Laurel Schaftary, Waukesha
Beverly Steinhoff, Verona
David Stucki, Waunakee
Tim Tysver, Madison

Administrative Staff:

Cletus J. Hansen, Division Administrator

Executive Staff:

Marlene A. Cummings, Secretary
June Suhling, Deputy Secretary
Myra Shelton, Executive Assistant

Cemetery Task Force

Spurred by serious problems at Evergreen Cemetery in Milwaukee and other problems that have continued to surface in audits of the trust account records of cemeteries, conducted by the Department, Secretary Marlene Cummings formed a multi-disciplinary task force for the purpose of reviewing the current cemetery laws and making recommendations for change. This Task Force should not be confused with the Cemetery Advisory Committee that continues to exist and will resume meeting after the Cemetery Task Force concludes its work. The Task Force is focusing on statutory changes that will help solve the current problems with cemetery regulation. The advisory committee advises the Department about cemetery practices and procedures, proposed legislation, proposed rule changes and about other issues that relate to cemetery regulation. The roster of the Task Force is on the following page.

The Task Force had 3 meetings before April 1999, and it had another meeting scheduled for April 23, 1999. The agenda for the April meeting included the review of a draft of many legislative proposals that would significantly affect all cemeteries in Wisconsin. Due to the timing relating to the preparation of this issue of the Regulatory Digest and the time of the meeting, we were not able to summarize the actions of the Task Force at the April meeting.

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The following motions were made and passed at the first 3 meetings of the Cemetery Task Force:	

MOTION: Jon Ruatti moved, seconded by Leslie Eisenberg, to define cemetery by using a definition, such as that prepared by the Cemetery Advisory Committee or the American Cemetery Regulators Association (ACRA), except that the definition should not use the phrase “an area dedicated,” as contained in the ACRA definition. Motion carried unanimously.

MOTION: Jon Ruatti moved, seconded by William Downey, to remove “lot” from the definitions section, to use “burial space.” Motion carried unanimously. (Dave Stucki was not present.)

MOTION: Ed Huck moved, seconded by Sarah Kamke, to interpret s. 157.08 (2), Stats., to require the Department to approve all kinds of sales, including the sale of the controlling stocks, and that the Department approve a transfer of assets without liabilities. Motion carried unanimously.

MOTION: Ed Huck moved, seconded by Jon Ruatti, that all cemeteries should be included in the requirement to receive departmental approval for the sale or encumbrance of a cemetery. Motion carried.

MOTION: Dave Stucki moved, seconded by Dan Kilkenny, that the Department should craft some language for a written contract requirement and submit it to the Task Force at the next meeting. The draft should include required provisions relating to cost, resale rights and other related items. Motion carried with a 15 to 4 vote.

MOTION: Ed Huck moved, seconded by Dan Kilkenny, that the Department also prepare a draft relating to deeds and submit it to the Task Force at the next meeting. Motion carried unanimously.

MOTION: Ed Huck moved, seconded by Mike Schuman, to recommend that all cemeteries be required to have an independent audit every 2 years and to submit a copy of the audit report to the Department. Motion passed with 2 persons abstaining. (Kelly Coleman was not present for voting.)

MOTION: Ed Huck moved, seconded by Bill Downey, to recommend that a standard for recordkeeping be established by the Department. Motion passed with 2 person abstaining. (Kelly Coleman was not present for voting.)

MOTION: Dorinda Floyd moved, seconded by Ed Huck, to recommend that standards for maintenance of cemeteries be established, which are comparable

to those in Florida’s statutes. Motion passed with 2 persons abstaining. (Kelly Coleman was not present for voting.)

CEMETERY TASK FORCE

April 1999

Secretary Marlene Cummings, Department of Regulation and Licensing, 1400 E. Washington Avenue, PO Box 8935, Madison WI 53708
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414-468-0382

William Cress, (replaced Peter Gunderson in April, 1999), P.O. Box 231, Stoughton, WI 53589
(representing the Funeral Service Alliance of Wisconsin)

Marie Drescher, Oak Grove Cemetery Association., 723 Packard Street, Tomah WI 54660

Leslie E. Eisenberg, Program Director, Burial Sites Preservation Program, State Historical Society of WI, 816 State Street, Madison WI 53706-1488

Dorinda Floyd, 200 E. Wells Street # 606, Milwaukee WI 53202 (representing the League of WI Municipalities)

Peter Gunderson, (replaced William Downs in April, 1999) 5203 Monona Drive, Madison WI 53716
(representing the WI Funeral Directors Association)

Thomas Hanlon, Director of Diocesan Cemeteries, 2705 Regent Street, Madison WI 53705

Ed Huck, Executive Director, Alliance of Cities Inc., 14 W Mifflin Street, PO Box 336, Madison WI 53701-0336 608-257-5881

Sarah L. Kamke, 1148 Grand Avenue, Schofield WI 54476

Daniel Kilkenny, President, Walworth County Cemetery Association, PO Box 447, Delavan WI 53115

Dewey Mathewson, 504 N. Water Street, New London WI 54961

Leroy Mixon, Reverend, 3810 N. 44th Street, Milwaukee WI 53216

Willa Jean Moore, 4063 N. 16th Street, Milwaukee WI 53209

E. Glen Porter III, Highland Memorial Park, 14875 W. Greenfield Avenue, New Berlin WI 53151-1515 414-786-6450

Jon Ruatti, Superintendent, Marinette Board of Cemetery Trustees, 2420 Mary Street, Marinette WI 54143

Laurel Schaftary, 384 W. Main Street, Waukesha WI 53186 414-542-6886 (representing the WI

Association of Monument Builders of North America)

Michael D. Schuman, Schuman & Pieper, 7161 N. Port Washington Road, Milwaukee WI 53217

Bill Smith, State Director, National Federation of Independent Business, 1 N. Pinckney Street # 201, Madison WI 53703 608-255-6083

Richard J. Stadelman, Executive Director, WI Towns Association, W7686 County Road MMM, Shawano WI 54166-6042

David Stucki, AARP, PO Box 95, Waunakee WI 53597

Issues Relating to Joint Ownership of Funeral Homes and Cemeteries

This issue has continued to fester a bit during the past few months. Several complaints have been filed against funeral directors who are on the board of directors of a cemetery. Meanwhile, the Funeral Directors Examining Board has asked Legal Counsel, Jacquelynn Rothstein, to prepare a written opinion that clarifies the current statutes and that more clearly addresses whether a funeral director may voluntarily, and without any pay, serve on the board of a non-profit cemetery. There has been some concern that an overly-narrow interpretation of the provisions in both the cemetery and funeral directors laws will seriously impair the operations of small, rural cemeteries.

Connection With Funeral Establishment Prohibited

For your convenience several paragraphs from s. 157.067, Wis. Stats, follow, which make some accommodation for small, rural cemeteries:

(2m) A cemetery authority may accept a fee or remuneration from a funeral establishment or from an owner, employe or agent of a funeral establishment if all of the following requirements are satisfied:

- (a) The fee or remuneration is a payment to the cemetery authority for a burial in the cemetery authority's cemetery.
- (b) The fee or remuneration payment is made on behalf of the person who is responsible for paying for the funeral establishment's services.
- (c) The funeral establishment will be reimbursed for the fee or remuneration by charging the person who is responsible for paying the funeral expenses an amount that is identical to the amount of the fee or remuneration paid by

the funeral establishment to the cemetery authority.

Legislative Update

Biennial Budget Bill – 1999 AB 133/SB 45

This bill contains 12 items which were recommended by Governor Tommy Thompson and which directly or indirectly affect all credential holders in the Department of Regulation & Licensing. Some of the most noteworthy recommendations from the perspective of cemetery officials and salespersons are: the expansion of information technology services, creating an Information Technology Specialist position, extension of a Division of Enforcement project, line costs for background checks through the Crime Information Bureau, revised fees for original licenses and license renewal, permission for the Department to assess additional fees if an applicant requests the Department to process an initial application for a credential or a renewal application on an expedited basis, and authority for the Department to cancel a credential if a demand for payment under a credit or debit card transaction is not paid.

The proposed fees for the initial registration of a cemetery authority, cemetery salesperson or preneed seller would be \$47. The fee for renewing the registration of a cemetery authority, cemetery salesperson and a preneed seller would remain at \$343, \$90 and \$61, respectively. The initial registration fee would increase by \$6. The fee for an initial credential is the same for all occupations and professions in the Department. Renewal fees, however, vary by the cost of enforcement of each type of credential.

The Biennial Budget Bill also proposes some changes to the statutes that require registration of cemetery authorities and cemetery salespersons. The primary thrust of these changes would be to clarify that a cemetery that is not exempt from registration must register every cemetery that it owns or operates and that has 10 or more sales of cemetery lots per year. By action of the Joint Committee on Finance, this provision will be considered outside of the Budget Bill.

Department of Regulation and Licensing
Cemetery Authorities, Salespersons & Preneed Sellers
P.O. Box 8935
Madison, WI 53708-8935

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(608) 266-5511

After dialing this number you are asked to press various extensions. For the following requests, please press numbers as noted:

Applications Forms	Press 11
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Application Processing & Requirements	Press 441

Visit the Department's Web Site

<http://badger.state.wi.us/agencies/drl/>
Send comments to dorl@mail.state.wi.us

Copies of Regulatory Digest on the Web

See the Web site listed above.

Wisconsin Statutes and Code

Copies of the Wisconsin Statutes and Administrative Code Relating to Cemetery Regulation can be ordered from the Department. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated November, 1998.

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Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes are not automatically provided.

WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.

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